IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5434 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALDEVSINH T SODHA

Versus

ADDITIONAL DIRECTOR GENERRAL OF POLICE,

Appearance:

1. Special Civil Application No. 5434 of 2001

MRS KETTY A MEHTA for Petitioner No. 1-39

MR VC VAGHELA for Petitioner No. 1

Mr.Desai.A.P.P. for Respondent No. 1-2

MR JAYANT P BHATT for Respondent No. 3-6

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/10/2002

ORAL JUDGEMENT

The petitioners are persons holding the posts of Armed Constable Grade II, and in this petition under Article 226 of the Constitution, the petitioners are challenging their apprehended reversion to the lower post of Constable.

2. For promotions from the post of Constables to Head Constables Grade II, the relevant rules provide for passing of the qualifying examination. Prior to 1993, the Department was taking the view that for the purpose of giving the promotions from the post of Constable to Head Constable, Grade II, the date of passing the qualifying examination is the relevant criterion for preparing the list of candidates eligible and fit for promotion. However, by Circular dated 15th May, 1993, the Additional Director General of Police issued instructions to the effect that at the time of considering the case of Constables for promotion the case of qualified candidates should be considered on the basis of seniority in the cadre of Constables, meaning thereby, once the Constable has passed the qualifying examination at the time of consideration for promotion, the date of passing the qualifying examination would not be relevant.

3. That Circular dated 15th May, 1993 came to be challenged by certain Constables including petitioner no.34 herein by filing Special Civil Application no.3183/1994 and it was contended therein that since the petitioners had passed the qualifying examination in 1992 i.e. earlier in point of time compared to the seniors (respondents nos.3 to 6) who had passed the examination in 1994, the petitioners were required to be promoted earlier in point of time .

4. Another petition came to be filed in the year 1996 being Special Civil Application no.6534/1996 by present petitioner no.34 and three other petitioners and by others. In the said petition also, the petitioners contended that since they had passed the qualifying examination in the year 1992 they should be given priority in the matter of promotion irrespective of their seniority in the cadre of Constables. The petitioners also challenged the same Circular dated 15th May, 1993 issued by the Additional Director General of Police, Armed Units. In Special Civil Application no.6534/1996, this Court (Coram: Hon'ble Miss Justice R.M. Doshit,J.), passed the following operative interim order dated 5-10-1996 as under:

" In my view, therefore, promotions to the post of Head Constables Grade II can be granted from amongst

qualified police constables in order of their seniority. Further, all Police Constables are entitled to a fair chance to take qualifying examination as provided under rule 59 of the said Rules. I, therefore, do not find any infirmity in the communication referred to hereinabove. Interim relief is therefore refused."

The said interim order was carried in appeal being LPA no.142 of 1997 and the appeal came to be dismissed by order dated 25th February, 1997 which was in the following terms:

" Dismissed.

At the request of the learned Counsel for the applicants and also in view of the fact that the matter is at interim stage, no reasons are assigned.

No orders on Civil Applications."

5. Inspite of the aforesaid clear interim order of the Court, the respondent no.2-Commandant, S.R.P. Group 12, Gandhinagar, issued promotion orders dated 11th December, 1998 (Annexure "B") giving promotions on the basis of the date of passing the qualifying examination and not on the basis of seniority of the Constables who had passed the qualifying examination. In other words, contrary to the interim order dated 5th/6th October, 1996 in Special Civil Application no.6534/1996, respondent no.2 granted promotions to the petitioners and several others on the basis of date of passing of the qualifying examination earlier than the contesting respondents who are senior to the petitioners in the cadre of Constables.

6. Ultimately, Special Civil Application no.3183/1994 came to be dismissed by this Court by judgment and order dated 3rd July, 2001 laying down the following principles:

"In view of the above discussion, the date of acquiring eligibility is irrelevant, in so far as the promotion to the higher rank in the State Reserve Police Force is concerned. The promotions are required to be considered from amongst all the eligible candidates in accordance with their inter se seniority. If in past, any person has been given precedence on account of his having acquired eligibility earlier, the same would be in contravention of the rules referred to hereinabove and cannot be relied as a precedent. In view of the above discussion, the petition is dismissed. Notice is discharged.

...."

Since this Court has clearly observed that the date of acquiring eligibility is irrelevant, in so far as the promotion to the higher rank in the State Reserve Police Force is concerned. In my view, no relief can be granted in this petition to the present petitioners. The contesting respondent candidates have already cleared up the examination in 1993 or 1994. At that time, the seniors to the petitioners have already cleared the said examination and, still, the petitioners were promoted to that post. In that view of the matter, it is not possible to accept Mr. Superhia's contention that the present petitioners should have been promoted in the year 1992 moment they passed the eligibility examination. In any case, the issue in question is covered by the aforesaid judgment of this Court and in that view of the matter, there is no substance in the argument of Mr. Supehia that the petitioners either should have been considered as seniors or should have been promoted in the year 1992, simply because they have passed the eligibility examination earlier as compared to other candidates. In view of what is stated above, there is no question of setting aside the communication which is in the form of a letter dated 15-5-1993. Similarly, no relief can be given to the petitioners regarding promoting them with effect from 1992, i.e. the year in which they have passed the qualifying examination. Since I do not find any substance in the petition, the same is required to be dismissed. Notice is discharged with no order as to costs."

7. The above judgment was carried in appeal and the Division Bench by its judgment dated 9th May, 2002 dismissed Letters Patent Appeal no.1147/2001. In the course of hearing of the said appeal, the learned Counsel for the appellants-petitioners invited the Court's attention to the amendment dated 3rd July, 1999 (Annexure "D") to the Rules called the Bombay State Reserve Police Force (Amendment) rules, 1999 for amending Rules 56 and 57 of the Bombay State Reserve Police Force Rules, 1959 as under:

"56. (1) Appointment to the post of Head Constable, Grade II, Head Constable, Grade I; Platoon Commander of Armed Police Sub Inspector shall be made:-

(a) in case of Head Constable Grade II, by promotion of a person of proved merit and efficiency from amongst the persons

working in the cadre of the constable on the basis of seniority;

(2) To be eligible for appointment by promotion to posts mentioned in sub rule (1), a candidate shall have passed the prescribed qualifying examination referred to in rule 60."

The Division Bench referred to the said amendment and expressed the clean opinion that even if the amendment was brought to the notice of the learned Single Judge, it would not have made any difference to the ultimate result.

8. The petitioners have thereafter filed the present petition challenging their apprehended reversion, and have urged the ground that the Additional Director General of Police has issued Circular dated 19th/20th July, 2000 (Annexure " F")- dealing with the situation likely to arise if all promotions earlier granted on the basis of date of qualification as the basis of promotion being substituted by the seniority in the cadre of Constables out of the qualified Constables who had passed the examination for promotion. The said Circular therefore provided that qualified seniors who had passed the relevant departmental examination but were left out of promotion may be promoted on vacant posts but juniors who were already promoted earlier on the ground of their having passed their examination earlier should not be reverted. Mrs. Mehta for the petitioners has heavily relied on the said circular and submitted that in view of the said circular, the petitioners are entitled to continue on the post of Head Constable Grade II and are not liable to be reverted in order to make room for seniors notwithstanding the judgment dated 3rd July,2001 in Special Civil Application no.3183 of 1994 as confirmed in Letters Patent Appeal no.1147/2001.

9. On the other hand, Mr. Desai, learned A.P.P. for the respondents nos.1 and 2 has opposed the petition and submitted that the respondents-authorities will not be able to implement the judgment dated 3rd July, 2001 as confirmed by the Letters Patent Bench on 9th May,2002, if the present petition is not dismissed and the ex parte ad interim relief is not vacated.

10. Mr. Jayant P. Bhatt, learned Advocate for the respondents 3 to 6 has vehemently opposed the petition and has relied on the affidavit-in-reply dated 1st

August, 2001 filed on behalf of the said contesting respondents and has submitted that the petitioners have suppressed material facts about the interim orders of this Court in Special Civil application n9o.6534/1996. The contesting respondents have made the following averments in paragraph 8 of their affidavit-in-reply:

" I say and submit that the present petitioners and other likewise identically situated persons like K..K.Yadav (petitioner no.34 herein) and others had managed with the subordinate staff of Commdandant, SRPF Group no.12, Gandhinagar, that the copies of order passed in SCA no.6534 of 1996 should not be placed before the Commandant of SRPF Group no.12 in absence of two vital orders passed by this Hon'ble Court, the Commandant SRPF Group relying upon the pendency of writ petition no.3183 of 1994 as well as SCA no.6534 of 1996 filed by K.K..Yadav (petitioner no.34 herein) and others granted promotion to the present petitioners on the post of 2nd Grade Head Constable by an order dated 11-12-1998."

11. Having heard the learned Counsel for the parties, it appears to the Court that the Circular dated 19th July, 2000 issued by the Additional Director General of Police cannot be allowed to operate so as to nullify the judgment dated 3rd July, 2001 of this Court in Special Civil Application no.3183/1994 as confirmed in Letters Patent appeal no.1147/2001 on 9th May,2002. Apart from the fact that the said Circular was issued prior to the aforesaid judgment, the Circular was issued without considering the interim order dated 5th October, 1996 passed by this Court in Special Civil Application no.6534/1996. In the said interim order, this Court had clearly expressed the view, even at the interim stage , that the date of passing the qualifying examination was not relevant so long as the seniors had passed the qualifying examination at the time of consideration of the case of eligible candidates for promotion and that for this purpose, seniority was the criterion and not the date of passing the qualifying examination. Whether the said order was overlooked for the reasons stated in paragraph 8 of the reply affidavit of respondents nos.3 to 6 the fact remains that the Circular was issued contrary to the aforesaid interim order of the Court. Hence, any such Circular issued by the Additional Director General of Police in the course of pendency of the petition and contrary to the interim order of this Court and inconsistent with the final judgment of this Court cannot be permitted to operate so as to deny promotions to qualified Constables who had passed the qualifying examination in 1994 (i.e. long before 11th

December, 1998) and who were entitled to have their case considered on the basis of seniority. Hence even if for promoting such qualified seniors, reversion of the petitioners or some of them becomes necessary, the respondents-authorities will have to resort to such reversion of the persons who were promoted by the order dated 11th December, 1998.in contravention of the circular dated 15-5-1993 and inconsistent with the interim order dated 5-10-1996 in Spl.C.A. no.6534 of 1996.

Mrs. Mehta has raised an apprehension that this might even warrant the reversion of some Constables who have been subsequently promoted even to the higher cadre of Head Constable Grade I. The Court does not purpose to deal with such hypothetical apprehension for the simple reason that the petitioners are holding the post of Head Constable Grade II and have not been promoted as Head Constable Grade I so far.

12. For the reasons aforesaid, the petition is dismissed. Respondents nos.1 and 2 shall consider the case of all qualified Constables in accordance with the aforesaid judgments of this Court in Special Civil Application no.3184/1994 as confirmed in Letters Patent Appeal no.1147/2001 and the interim order dated 5th October, 1996 without in any manner operating the Circular dated19/20th July, 2000 and for this purpose, if necessary, the respondents/authorities shall also revert the Constables who were promoted as Head Constables Grade II vide order dated 11th December,1998.

13. In view of the fact that the petitioners suppressed the material fact about the interim order dated 5th October, 1996 passed by this Court in Special Civil Application no.6534/1996 in spite of of the fact that petitioner no.34 and three other petitioners were also the petitioners there, the petitioners herein shall pay the costs of this petition to respondents nos.3 to 6, which are quantified at Rs.20,000/-(Rupees twenty thousand) in one set, within one month from today, failing which, respondents nos.1 and 2 shall deduct the amount from the salaries of the respective petitioners for the month of November, 2002 payable in December, 2002.

Mrs. Mehta's request that all the petitioners may not be saddled with costs , cannot be accepted. All the petitioners have since July, 2001 enjoyed the ex parte ad interim relief against reversion which would not have been granted if the aforesaid interim order dated 5th October, 1996 were not suppressed from this Court.

All the petitioners having permitted petitioner no.34 to affirm the affidavit and having themselves enjoyed the fruits of such suppression cannot be exonerated from the liability to pay costs to respondents nos.3 to 6. In any case, if the petitioners who were not parties to any previous proceedings believe that petitioner no.34 and others who were petitioners in previous proceedings alone should bear the costs, it is open to them to claim reimbursent from them later on.

14. No order of costs is being passed in favour of respondents nos.1 and 2 because they were also party respondents in Special Civil Application no.6534/1996 and for reasons best known to the said respondents, the order dated 5th October, 1996 was not at all considered while issuing promotion order dated 11th December, 1998 nor was it brought to the notice of respondent no.1, who could not and would not have issued the instructions dated 19th/20th July, 2000 if the said interim order had been brought to his notice.

15. Mrs. Mehta prays for continuing the ad interim stay granted earlier and also prays for stay of the present order directing the petitioners to pay respondents nos.3 to 6 the costs of this petition.

In the facts and circumstances of the case, the request is not granted.

(M.S.Shah,J.)

stanley-mss.